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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,969	01/25/2002	N. Leigh Anderson	41550	4003
27860	7590	03/01/2006	EXAMINER	
LARGE SCALE BIOLOGY CORPORATION 3333 VACA VALLEY PARKWAY SUITE 1000 VACAVILLE, CA 95688			CHIN, CHRISTOPHER L	
			ART UNIT	PAPER NUMBER
			1641	

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/061,969

Applicant(s)

ANDERSON ET AL.

Examiner

Christopher L. Chin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-37 and 81-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-37 and 81-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/12/05 & 4/25/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I – claims 30-37 and 81-97 in the reply filed on 12/2/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

2. Claims 30-33, 35, 37, and 81-97 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30 is vague. In line 2, "a agent" should be amended to read --an agent--.

Claims 31, 33, 35, 37, and 94-96 are vague because they do not further limit the claims from which they depend. For example, claim 31 is broader than claim 30 since it recites a greater number of cells than claim 30.

Claims 32 and 81 are vague. The recitation of "a fraction of a biological cell" is not clear as to what part of the biological cell is being referred to.

Claim 93 is vague. Since the structures project away from the solid phase support, what solid material is between the structures that has to be removed? There doesn't appear to be any antecedent support for the "solid material".

Claim Rejections - 35 USC § 102

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 30-37, 81-86, 89, and 94-97 are rejected under 35 U.S.C. 102(b) as being anticipated by Eggers et al.

Eggers et al (US Patent 5,670,322) discloses an array for detection of multiple analytes in a sample. The array contains a number of test sites formed in a semiconductor wafer. Each test site contains a probe which is capable of binding to an analyte. The analytes can be DNA, cells, or antibodies. Different probes are used in each of the test sites for simultaneous detection of multiple analytes in a single array (col. 4, lines 1-11). A 1 cm x 1 cm array could easily be fabricated containing 1,000,000 test sites (col. 11, lines 63-64). For direct attachment of probes to the test sites, the test sites must be fabricated with materials, such as gold and other metals, capable of forming conjugates with the probes. For example, a synthetic DNA probe labeled with a thiol group at either the 5' or 3' end will form a stable conjugate with gold to create an array of directly attached probes (col. 8, lines 35-51).

The direct attachment of probes to the test sites in Eggers et al is not considered chemical bonding of the probe to the test site since an ionic or covalent bond is not formed between the probe and material in the test site.

As shown in Figure 2a, a metal electrode plate (24a) is in each test site attached to a solid phase support (22). The metal electrode plate (24a) is considered to be analogous to the "solid material" recited in instant claims 36 and 84 that is adhered to a solid phase support or the plurality of structures recited in instant claims 86 and 89.

5. Claims 32-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Wagner et al.

Wagner et al (US Patent 6,406,921 B1) discloses a protein array. The array contains 1,000 or more patches of proteins within a total area of 1 square centimeter (col. 7, lines 14-15). The proteins immobilized on the array can be receptors, enzymes, antibodies, etc (col. 7, lines 34-47). The array is formed on a substrate composed of organic, inorganic, biological, or non-biological materials, such as glass, gold, or polymers (col. 7, lines 50-67). Each of the patches comprises a monolayer for attachment of the proteins to each of the patches and optionally a metal film (i.e. a solid material) adhered to the substrate between the monolayer and substrate surface of each patch (col. 8, lines 10-65).

Information Disclosure Statement

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6. The information disclosure statement filed 4/25/05 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because it contains PTOL-892s and 1449s from other applications that lack any space for the Examiner to initial off the listed references. Only those PTOL-1449s that are in the proper format have been considered on their merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 6,350,618

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher L. Chin whose telephone number is (571) 272-0815. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher L. Chin
Primary Examiner
Art Unit 1641

2/21/06